

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 2057 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SHAH CHHOTALAL PRABHUDAS - Petitioner(s)

Versus

DIST SUPPLY OFFICER & 1 - Respondent(s)

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Appearance :

MR HM PARIKH for Petitioner(s) : 1,
MR HUKUM SINGH, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/03/2007

ORAL JUDGMENT

1. Shri H.M. Parikh, learned counsel for the petitioner; Shri Hukum Singh, learned AGP for the respondents. Heard.
2. The petitioner, Shah Chhotalal Prabhudas, claiming itself to be a partnership firm suffered a raid in their godown on 16.7.92. It

was found that 5280 kgs. mustard and 119 kgs. Til [oil seeds] were in excess of the permissible limits. It is to be noted at this stage that the petitioner does not have any license under the provisions of the Gujarat Pulses Edible Oilseeds and Edible Oil Storage Control Order, 1976. The said Order has been issued under Section 3 of the Essential Commodities Act, 1955. It provides that particular persons may store particular quantity without license, but if they wish to store something more than that, then they would be obliged to obtain a license from the competent authority/officer. The Order provides that storage beyond the limit by unlicensed dealer or even by a licensed dealer would be taken to be a breach of the Order, any quantity found in excess of the limits as provided under the Licensing Order or under the license may be confiscated. A show cause notice was issued to the petitioner firm and they had filed their detailed reply submitting inter alia that the petitioner is also having a sister firm, namely Arvindkumar & Co. It was submitted that both the firms had common godown and if the goods belonged to the other firm, the same could not be included in the stock of the petitioner. After giving appropriate opportunity of hearing, the competent authority held that the goods belonged to the petitioner, the same were liable to be confiscated, but exercising his discretion in favour of the petitioner, the authority directed that 50% of the goods/oil seeds be confiscated. As the said order was confirmed by the Deputy Secretary, Panchayat & Civil Supplies in appeal filed under Section 6-A of the Essential Commodities Act, the petitioner is before this Court.

3. Learned counsel for the petitioner submits that present is a case where defence of the present petitioner was not absolutely untenable or not palatable. According to him, if the two sister

concerns had common godown, then total quantity ought to have been held to belong to both the firms. On being asked that whether the petitioner or such sister concern ever produced any purchase bills or invoices before the authority to satisfy the said authority that the goods found in the godown did belong to or were purchased by the sister concern of the present petitioner, to this, learned counsel for the petitioner submitted that no such bills were produced. If such is the situation and there was no evidence before the authority to hold that the goods belonged to the sister concern, but came to be stocked or staked in the same godown, then I cannot hold that the authority committed any wrong in holding against the interest of the petitioner.

4. Placing reliance upon the judgment of the Supreme Court in the case of *N. Nagendra Rao & Co. v. State of Andhra Pradesh* [1995] GLH 298, it was submitted that an authority, which is competent to exercise untrammelled powers is still required to exercise powers in an acceptable manner and not arbitrarily. It is submitted that present is a case of technical breach and under the circumstances, 50% confiscation would be too hard a punishment.
5. In the said matter, the Supreme Court had observed that language of Section 6-A[1] was indicating that every contravention cannot entail confiscation and therefore, the word “may” has been used in the section. The Supreme Court also observed that the person who had committed technical violation such as failure to put up price list etc. or discrepancy in stock would not be compared with a person who had been indulging in black marketing or in sale of deteriorated goods. The Supreme Court observed that in such case, discretion must be exercised in favour of the person who is guilty of technical breach or technical wrong. In the present case, the total stock of mustard seeds was 5280 kgs., which is more

than 5 tonnes. So far as the Til [oil seeds] is concerned, it was only 119 kgs. The petitioner did not bring any evidence on the record that from whom such large quantity of the oilseeds was purchased. He did not show to the Court or to any other authority that what were the names of the sellers and what amount towards the sale price was paid to those persons. There is nothing on the record to show or suggest that in fact, the goods were stored only to sell in open market and earn some reasonable profit. According to the petitioner, he purchases goods and sells them to the wholesalers. If this is the business of the petitioner and he is earning profit from his business, then he is required and obliged to observe the law either by maintaining his stocks within limits which he can maintain without license or within the limits as prescribed in the license if such license is obtained.

6. Present is not a case where goods in total have been confiscated. The authority has already exercised its discretion in favour of the petitioner by directing that only 50% or half of the goods be only confiscated. In my opinion, the petitioner, who was found in possession of such huge quantity of articles, if is given respite to the extent of 50%, then it cannot be argued or said that no discretion was exercised in his favour. I find no reason to interfere. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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